IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

J. ELBERT PETERS, ET AL., *Plaintiffs*

v.

DUDLEY CLARK, ET AL., *Defendants*

Civil Action No. 70-21

Judgment

In conformity with the memorandum opinion of the Court filed contemporaneously herewith,

It is ORDERED, ADJUDGED and DECREED by the Court that plaintiffs are not entitled to the injunctive relief for which they pray; that this action be and the same is hereby dismissed, and that the costs of court incurred herein be and the same are hereby taxed against plaintiffs, for which, unless presently paid, execution may issue.

DONE this 14th day of December, 1971.

/s/ SEYBOURN H. LYNNE
Seybourn H. Lynne
Chief Judge

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Memorandum Opinion

This cause, coming on to be heard, was submitted for the judgment of the Court upon the prayer of plaintiffs for permanent injunctive relief, upon the pleadings and upon the proof adduced in open court on November 26, 1971.

At the conclusion of the evidence the Court announced from the bench its ultimate findings and conclusions that Act No. 1739 of the 1971 General Session of the Legislature of Alabama providing for the election of the five members of the Madison County Commission by the qualified voters of the county at large though required to be a resident and qualified voter in the district which he represents was neither violative of the equal protection clause of the fourteenth amendment nor of Article IV, Section 106 of the Alabama Constitution of 1901.

In rejecting plaintiffs' federal claim, the Court orally announced its reliance upon the teachings of *Whitcomb* v. *Chavis,* 403 U.S. 124 (1971); *Dusch* v. *Davis,* 387 U.S. 112 (1967); *Fortson* v. *Dorsey,* 379 U.S. 433 (1965); *Davis* v. *Thomas County,* 380 F.2d 92 (5th Cir. 1967); and *Robertson* v. *Gallion,* 282 F. Supp. 157 (M.D. Ala. 1968).

In declining to go behind the Journals of the Legislature to determine whether publication was in fact made on the dates shown by the proof entered on the Journals, the Court rested its disallowance of the state claim on *Byrd* v. *Colquett,* 212 Ala. 266, 271, 102 So. 223 (1924), and *Weeks* v. *State,* 39 Ala. App. 231, 97 So. 2d 161 (1957).

Counsel were requested to submit proposed findings of fact and conclusions of law consistent with the foregoing

orally announced opinions. The Court adopts as its own the following suggestions of the attorneys of record for plaintiffs:

> The original complaint, filed on January 8, 1970, along with several amendments filed thereto, put at issue the constitutionality of the provisions of Act No. 1739 of the 1971 General Session of the Legislature of Alabama as said provisions pertain to the manner and procedure of electing the Chairman and members to the Madison County Commission of Madison County, Alabama. The thrust of plaintiffs' challenge centers around their contentions that the election procedure for 1972 as provided for in said Act is violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America in that it will operate to minimize or cancel out the voting strength of racial and political elements of the voting population of Madison County, Alabama, and provide for district representation by the individual members to the Madison County Commission which, as of August 1, 1971, has the following number of registered voters residing in the five Commission districts: District 1—3,358; District 2—2,907; District 3—3,739; District 4—4,519; and District 5—58,636. Plaintiffs have furthermore challenged the veracity of the House and Senate journals of the 1971 General Session of the Legislature of Alabama which reflect that aforesaid Act No. 1739, being a local act having application to Madison County, Alabama, only, was properly advertised pursuant to the provisions of Section 106 of Article IV of the Constitution of Alabama of 1901.
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> The Court finds from the evidence that while the five Madison County Commission districts are disproportionate in population the evidence fails to disclose that Act No. 1739 will operate during the 1972 general elections to minimize or cancel out the voting strength of racial and political elements of the voting population of Madison County, Alabama, nor does the Court find that the one man-one vote principle will be offended by the provisions pertaining to the 1972 election procedures requiring each candidate to reside in the district which he seeks to represent.

Furthermore, the Court will not look beyond and consider the evidence which challenges the veracity of the journals of the Alabama House of Representatives and the Alabama State Senate which reflect that Act No. 1739 was properly advertised pursuant to the provisions of Section 106, Article IV, of the Constitution of Alabama of 1901.

The Court therefore rules that Act No. 1739 of the 1971 Regular Session of the Legislature of Alabama is not violative of the Fourteenth Amendment to the Constitution of the United States of America nor of Section 106 of Article IV of the Constitution of Alabama of 1901.

An order will be entered pursuant to the foregoing opinion and findings.

DONE this 14th day of December, 1971.

/s/ SEYBOURN H. LYNNE
Seybourn H. Lynne
Chief Judge